

Appl. No. 09/805,652
Amd. dated October 23, 2007
Reply to Office Action of 04/26/2007

REMARKS
**Reconsideration And Allowance
Are Respectfully Requested.**

Claims 1-26, 29-31, 33-34, 109 and 110 are currently pending. Claim 1 has been amended. Claims 27 and 28 have been canceled. No claims have been added. No new matter has been added.

Claim 1 has been rejected on the ground of nonstatutory obvious-type double patenting as being unpatentable over claims 61 and 102 of U.S. Patent No. 6,371,904. Claim 1 has been provisionally rejected on the ground of nonstatutory obvious-type double patenting as being unpatentable over claim 36 of U.S. Patent Application No. 10/114,712. Claim 1 has been provisionally rejected on the ground of nonstatutory obvious-type double patenting as being unpatentable over claim 38 of U.S. Patent Application No. 10/960,618. Claim 1 has been provisionally rejected on the ground of nonstatutory obvious-type double patenting as being unpatentable over claims 109, 128, 152 and 177 of U.S. Patent Application No. 10/960,622.

The Examiner is requested to stay the double patenting rejection until allowable subject matter is indicated.

Claims 1-4, 7, 13-15, 23, 24, 26, 27, 31, 33, 109, and 110 stand rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,080,099 to Slater et al. (Slater). It is respectfully urged that Claim 1, as amended, distinguishes over Slater. Slater's invention is directed to radioactive therapeutic seeds. It is respectfully submitted that Slater does not teach or suggest the subject matter of amended Claim 1, which recites that the marker and bodies are non-radioactive.

Claims 5, 6, 8-12, 16, 18-22, 25, 28-30 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Slater et al. Claim 17 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Slater et al. in view of U.S. Patent No. 6,666,811 to Good. Slater (which is

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and Good (which is directed to radioactive implants and radiation therapy, as noted in the Abstract of Good) do not teach or suggest the subject matter of amended Claim 1, from which these claims depend. As to those claims dependent upon independent claim 1, they are also believed to overcome the references of record for at least the reasons presented above. As such, Applicant respectfully requests the rejection of these dependent claims be withdrawn.

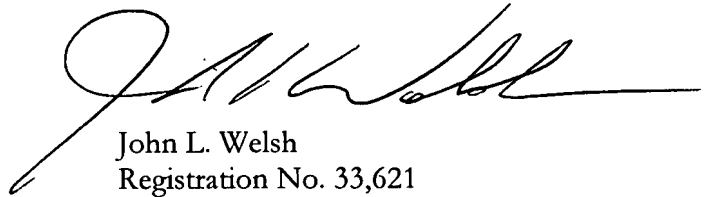
Applicant's representative took over prosecution of this case per the Power of Attorney filed September 27, 2007. According to the PAIR System, a Notice of Informal or Non-Responsive Amendment was mailed August 28, 2007. As neither Applicant nor Applicant's previous representative ever received the Notice and the Notice was unavailable for viewing via the PAIR System, the undersigned called Examiner Ruth Smith on October 23, 2007 to request a copy of the Notice. Examiner Smith informed the undersigned that the Notice of Informal or Non-Responsive Amendment was never mailed to Applicant. In view of this, it is believed that no extension request or fee is due with this response. If, however, an extension request and fee are required, please consider this a conditional petition for extension of time. The Commissioner is authorized to charge the extension fee to Deposit Account 01-2221.

It is believed that this case is in condition for allowance and reconsideration thereof and early issuance is respectfully requested.

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If it is felt that an interview would expedite prosecution of this application, please do not hesitate to contact applicants' representative at the below number.

Respectfully submitted,



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